

STATE OF MAINE
KENNEBEC, ss

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
LAW DOCKET NO: KEN-15-534

STATE OF MAINE,
Plaintiff-Appellee

vs.

CHRISTOPHER T. KNIGHT,
Defendant-Appellant

ON APPEAL FROM THE SUPERIOR COURT
FOR KENNEBEC COUNTY

BRIEF OF THE PLAINTIFF-APPELLEE

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STATEMENT OF FACTS

Procedural Background

On August 22, 2013, Christopher T. Knight was indicted on one count of Burglary, Class B (17-A M.R.S. § 401(1)(B)(4)), and one count of Theft by Unauthorized Taking, Class E (17-A M.R.S. § 353(1)(A)). (Indictment, Appendix ("App.") at 11).¹ The victim in both counts was Lillie Cogswell. *Id.* Mr. Knight was arraigned on the indictment and pled not guilty on August 23, 2013. (Docket Record, App. at 2).

On October 28, 2013, Mr. Knight pled guilty to the charges of Burglary and Theft in the indictment. (Docket Record, App. at 4). Mr. Knight was accepted into the Co-Occurring Disorders Court, with sentencing to be deferred to a later date. *Id.*

On March, 23, 2015, after successfully completing the Co-Occurring Disorders Court, Mr. Knight was sentenced to five years, with all but seven months suspended, and three years of probation on the burglary conviction. (Docket Record, App. at 5-6). He was sentenced to a concurrent four months on the theft conviction. *Id.* The court ordered Mr. Knight to pay restitution in the amount of \$1,125.00 to the Maine State Police for costs incurred in repairing land traversed in clearing out and recovering evidentiary items from Mr. Knight's campsite. (Sentencing Transcript ("Sent. Tr.") at 15, App. at 34).

¹ While Mr. Knight was indicted and plead guilty to other counts of burglary and theft on the same day, the argument regarding restitution was made a part of only this docket number.

On March 27, 2015, defense counsel filed a Motion to Correct Sentence arguing that the restitution order of \$1,125.00 to reimburse the Maine State Police was illegal because the order was not authorized by 17-A M.R.S. §§ 1322, 1325. (Motion to Correct Sentence, App. at 9). The State timely objected, arguing that the Court correctly ordered that restitution be paid to the Maine State Police for expenses incurred. (Response to Motion to Correct Sentence, App. at 16). Mr. Knight filed a timely response. The matter was set for hearing. (Docket Record, App. at 6).

On July 20, 2015, a hearing was held. (Docket Record, App. at 7; Transcript of Hearing on Motion to Correct Sentence ("Mot Tr."), App. at 18). After hearing, the Court (Mills, J.) denied Mr. Knight's Motion to Correct Sentence and ordered Mr. Knight to pay restitution in the amount of \$1,125.00. (Docket Record, App. at 7; Order on Motion to Correct Sentence ("Order") at 2, App. at 10). This appeal followed.

Factual Background

The court ordered Mr. Knight to reimburse the Maine State Police for costs it incurred in constructing and deconstructing a road across Lisa Fitzpatrick's property to access Mr. Knight's campsite. (Sent. Tr. at 6, App. at 32). Mr. Knight's campsite was hidden for 27 years on the property of Lisa Fitzpatrick and he did not have permission to be there.

At hearing on Defendant's Motion to Correct Sentence, the State argued that the Maine State Police's road construction and deconstruction had two purposes: (1) to collect evidence located at Mr. Knight's campsite; and (2) to clean up and restore the environment to its prior existing condition. (Mot. Tr. at 6-7, App. at 23-24). The State acknowledged that the property where Mr. Knight was living was not owned by any of the victims of the burglary and theft convictions, but that it was necessary to cross the property of Lisa Fitzgerald in order to access Mr. Knight's campsite. (Mot. Tr. at 7, App. at 24). Mr. Knight argued that the restitution order was illegal because this situation did not fit within "the strict language of the [restitution] statute." (Mot. Tr. at 3, App. at 20). After hearing, the Court found that:

"[t]he Maine State Police constructed a road in order to reach the campsite where Defendant resided for years. The police collected evidence of Mr. Knight's crimes, which he brought to and kept at the campsite. Police then cleaned and restored the area to its condition prior to Mr. Knight's residing there. Finally the police removed the access road."

(Order at 1, App. at 9).

The Court further stated that:

“[t]here is a nexus between Defendant’s crimes and the campsite . . . the evidence could not have been collected and the campsite could not have been restored without construction of the road, which later was removed.”

Id.

Lastly, the Court concluded that the Maine State Police can be considered a victim because it was the “capable entity . . . responsible for [the] ‘environmental clean-up expense’” under 17-A M.R.S. § 1322(3)(C-1). Order at 2, App. at 10.

Statement of the Issue

Whether the Superior Court (Mills, J.) erred in ordering Mr. Knight to reimburse the Maine State Police for costs incurred in constructing and deconstructing a road to access Mr. Knight's campsite to collect evidence and clean out the property.

Summary of Argument

The Superior Court did not err in ordering Mr. Knight to pay restitution to the Maine State Police. The purpose of restitution is to compensate an individual or entity for economic loss. The Maine State Police accessed Mr. Knight's campsite on the property of Lisa Fitzgerald to restore the land and collect evidence of the burglary and theft. This "environmental clean-up expense" is a compensable category under 17-A M.R.S. § 1322(3)(C-1). Mr. Knight encourages this Court to strictly interpret this statute to apply *only* to hazardous chemical clean-up. (Appellant's Brief at 6). The statute states in part that environmental clean-up expenses may be "to restore the environment to its previous condition prior to *any* harm or damage." 17-A M.R.S. § 1322(3)(C-1) (*emphasis added*). The term "any" should be interpreted broadly. The need for the environmental clean-up was a direct result of Mr. Knight's criminal conduct and resulting convictions. Mr. Knight's offenses were in fact, the cause of the costs incurred.

Even if this Court finds that the repaired damage was *not* an environmental clean-up expense, it must find that there was "property loss" under 17-A M.R.S. § 1322(3)(D). Lisa Fitzpatrick's property was "destroyed or otherwise broken or harmed" not only as a result of the Maine State Police's need to traverse across her property to access Mr. Knight's campsite, but also as a result of Mr. Knight living there unlawfully for approximately 27 years. The

resulting cost to the police to repair the damage to Lisa Fitzpatrick's property flowed from Mr. Knight's criminal conduct.

Argument

Under Maine law, the purpose of restitution is to compensate a loss that a victim suffers through no fault of his or her own. *See generally* 17-A M.R.S. § 1321. A “victim” means “a government that suffers economic loss or a person who suffers personal injury, death or economic loss as a result of a crime . . .” 17-A M.R.S. § 1322(7). There must be proof that a Defendant’s crime caused the damages for which a restitution order is sought. *State v. McDonough*, 2009 ME 39 ¶6.

Restitution may be authorized, in whole or in part, as compensation “for economic loss.” 17-A M.R.S. § 1325(1). Economic loss includes the cost of “environmental clean-up expense.” 17-A M.R.S. § 1322(3)(C-1). The statute reads:

‘Environmental clean-up expense’ means any reasonable expense incurred for products and services needed to clean up any harm or damage caused to the environment, including any harm or damage caused by chemicals; to restore the environment to its previous condition prior to any harm or damage; and to properly dispose of chemicals and other materials, including those used in the manufacture of scheduled drugs in violation of chapter 45.

Id.

Environmental clean-up *includes* any “harm or damage caused by chemicals” but does not *limit* environmental clean-up to damage caused by chemicals.

The court did not err in assessing restitution in this case. Mr. Knight was rightfully ordered to pay the \$1,125.00 to reimburse the Maine State Police. But for the crimes of Mr. Knight, the State Police would not have had to construct and deconstruct a road to gain access to his campsite for purposes of cleaning up and evidence collection. This campsite on Lisa Fitzpatrick's property was located deep in the woods and was not accessible without construction of the road over Lisa Fitzpatrick's property. (Order at 1, App. at 9). Justice Mills, in granting the State's request for restitution, stated that "... this is money that these people who lived in this area would have had to pay, but for the State Police stepping up and paying it. And I think under the extraordinary circumstances of this case, that that would be a fair amount to be paid by Mr. Knight." (Sent. Tr. at 15, App. at 34).

Mr. Knight argues that 17-A M.R.S. § 1322(3)(C-1) is limited to chemical spills or hazardous materials. The statute clearly was not intended to be read so strictly. If the statute is to be construed as recommended by Mr. Knight, law enforcement and other responsible entities might never be compensated for their clean-up expenses if the clean-up did not involve "hazardous chemicals." The Maine State Police is a victim under 17-A M.R.S. § 1322(7) because it is an entity that suffered economic loss as a result of a crime. The economic loss sustained was a result of an "environmental clean-up expense," pursuant to 17-A M.R.S. § 1322(3)(C-1) which includes "products or services needed to . . . restore the environment to its previous condition prior to any harm or damage."

The State disagrees with Mr. Knight's characterization that there is an absence of a nexus between Mr. Knight's actual offenses for which he was convicted and the building of a road by the Maine State Police to the place where Mr. Knight was illegally living and holding evidence of the crimes. (Appellant's Brief at 8). The situation in this case is entirely different from State v. McDonough, 2009 ME 39. In that case, this Court held that there was no nexus between the defendant's crime, operating after suspension, and the resulting damages to the taxicab driver. This Court reasoned:

"McDonough's criminal action was operating a motor vehicle while his license was under suspension. Although it is possible that his operation was also negligent, negligent operation is not an element of the crime of which he was convicted and, therefore, the conviction does not establish that McDonough was negligent or that his negligence was the cause of the damages claimed by the taxi driver."

State v. McDonough, 2009 ME 39, ¶ 6.

This case is distinguishable from McDonough because there is a nexus between Mr. Knight's crime and the economic loss. Mr. Knight hid the fruit of his crimes at his inaccessible campsite on Lisa Fitzgerald's land; the police had to construct a road in order to reach this campsite, locate and collect evidence of the crimes, then clean and restore the property of Lisa Fitzgerald by deconstructing the road they built. During the hearing on Defendant's Motion to Correct Sentence, Justice Mills stated that "the evidence could not have been collected and the campsite could not have been restored without

construction of the road, which later was removed.” (Order at 1, App. at 9). She further stated that a “capable entity will be responsible [for such environmental clean-up expense].” (Order at 2, App. at 10). The State Police is a “capable entity” that took the initiative to restore the property owned by Lisa Fitzgerald to its previous condition. Its necessary response provides the nexus needed to justify restitution for costs it incurred, a “property loss” under § 1322(3)(D).

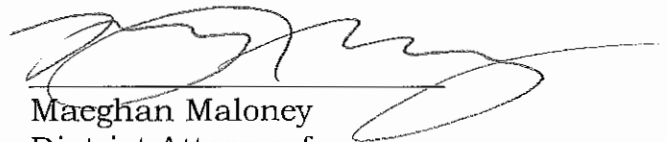
Conclusion

Wherefore, the State respectfully requests that this Court affirm the Superior Court’s order of restitution of \$1,125.00 in this matter.

Dated: March 28, 2016



Emily E. Collins
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Maeghan Maloney
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Prosecutorial District IV

CERTIFICATE OF SERVICE

I, Emily Collins, Student-Attorney for the Appellee, State of Maine, certify that I have this day caused two copies of the foregoing "Brief of the Appellee" to be served upon the Appellant by depositing said copies in the United States Mail, postage prepaid, addressed to Walter McKee, Esq., McKee Billings, 133 State Street, Augusta, Maine 04330.

Dated: March 28, 2016

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